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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services	)	CC Docket No. 94-54
	)	
	)	

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

Pursuant to section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), Alloy LLC ("Alloy"), by its attorneys, hereby opposes the petition for reconsideration ("Petition") filed by the Association of Communications Enterprises ("ASCENT") on September 13, 2000.[1] In the *Order*, the Commission decided not to adopt a general policy requiring facilities-based CMRS providers to unbundle the elements of interconnection in order to permit resellers to interconnect their switches between the CMRS mobile telephone switching office and the facilities of LECs, *i.e.*, reseller switch interconnection. ASCENT asks the Commission to reconsider that decision. However, ASCENT offers no new arguments or facts not previously considered or discussed in

[1] *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Fourth Report and Order*, FCC 00-253, __ F.C.C.R. _____ (rel. July 24, 2000) ("*Order*"). Alloy is the new joint venture combining the wireless operations of BellSouth Corporation ("BellSouth") and SBC Communications Inc. and provides commercial mobile radio service ("CMRS") to more than 19 million customers in 38 states, the District of Columbia, and two U.S. territories. *See In re Applications of SBC Communications Inc. and BellSouth Corporation*, WT Docket No. 00-81, *Memorandum Opinion and Order*, DA 00-2223, __ F.C.C.R. _____ (rel. Sept. 29, 2000).

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the Commission's *Order*. Accordingly, the Commission should summarily deny ASCENT's Petition.

ASCENT FAILS TO MEET THE STRINGENT STANDARD FOR RECONSIDERATION OF THE COMMISSION'S LEGAL AND POLICY FINDINGS

In the *Order*, the Commission, *inter alia*, correctly concluded that neither sections 201, 251(a) and 332 of the Communications Act of 1934, as amended ("the Act"), nor past precedent, require the agency to impose a reseller switch interconnection requirement on facilities-based CMRS providers. *Order* at ¶¶ 9 and 13. In addition, the Commission found that such a requirement is not in the public interest, because: (i) CMRS providers lack market power; (ii) competition exists in the CMRS marketplace; and (iii) the proposed interconnection may degrade service to CMRS consumers and determining the costs of interconnection will substantially increase the agency's administrative burden. *Id.* at ¶¶ 20-22. Accordingly, the Commission declined to impose a reseller switch interconnection requirement and decided to rely on the marketplace. *Id.* at ¶ 19.

In order to justify reconsideration of the Commission's *Order*, ASCENT must demonstrate:

> material error of fact or law or present[] new or previously unknown facts and circumstances which raise substantial or material questions of fact that were not considered and that otherwise warrant Commission review of its prior action.[2]

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[2] *Petitions for Reconsideration of the Second Report and Order; Implementation of Section 207 of the Telecommunications Act of 1996; Restrictions on Over-the-Air Reception Devices: Television Broadcast Service, Direct Broadcast Satellite, and Multichannel Multipoint Distribution Service*, CS Docket No. 96-83, *Order on Reconsideration*, 14 F.C.C.R. 19924, ¶ 7 (1999) (citations omitted) ("*OTARD Reconsideration Order*"); *see also ICC v. Brotherhood of Locomotive Engineers*, 482 U.S. 270, 282-84 (1987) ("[T]he agency's refusal to go back over

(continued...)

As shown below, ASCENT fails to meet this threshold, and the Commission should therefore deny the Petition.

ASCENT disagrees with the Commission's analysis under Section 201 of the Act. As shown below, that analysis was correct.

The Commission first considered whether it is statutorily obligated to mandate reseller switch interconnection pursuant to sections 201 and 332. The Commission appropriately concluded that section 332 requires interconnection "pursuant to the provisions of section 201," and that section 201 "requires interconnection only when 'the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest.'" *Order* at ¶ 9. These statutory provisions obviously do not mandate a reseller switch interconnection requirement, and the Commission so found. *Id.* The Commission also noted that the direct or indirect interconnection requirement in section 251(a) does not mandate direct interconnection to a reseller's switch (referring to other decisions construing indirect interconnection as satisfying the statute). *Id.* at ¶ 13.

Second, the Commission properly determined that *Hush-A-Phone v. United States* and its progeny neither modify the Commission's obligations nor establish the applicable standard for requiring facilities-based CMRS providers to interconnect their networks with the switches of

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[2] (...continued)
ploughed ground is nonreviewable."); *Southwestern Bell Telephone Company v. FCC*, 180 F.3d 307, 312 (D.C. Cir. 1999) (holding nonreviewable, the Commission's denial of a petition for reconsideration that was not based on new evidence or changed circumstances); *Beehive Telephone Company Inc. v. FCC*, 180 F.3d 314 (D.C. Cir. 1999) (denying review of agency's denial of petition for reconsideration for lack of new evidence or changed circumstances).

resellers.[3] Specifically, the Commission held that the private detriment/public benefit analysis in *Hush-A-Phone* applies only in the context of connecting customer premises equipment to the facilities of a carrier with market power. *Id.* at ¶ 12. In support of its finding, the Commission cited the Sixth Circuit's decision in *Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 437 (6th Cir. 1998), which upheld the Commission's *CMRS Resale First Report and Order* and rejected "the notion that the *Hush-A-Phone* decision set out a 'public detriment/private benefit' test for FCC action." *Id.* at ¶ 10 (quoting *Cellnet*, 149 F.3d at 437). The Commission thus held *Hush-A-Phone* inapplicable to assessing whether reseller switch interconnection is in the public interest for facilities-based CMRS providers that lack market power.[4]

ASCENT acknowledges that *Hush-A-Phone* and its progeny involved interconnection with dominant carriers, and that the Commission's reliance on *Cellnet* is "understandable." Petition at 12, 13. Nevertheless, ASCENT's Petition merely reiterates the position that *Hush-A-Phone* establishes the proper standard for determining whether reseller switch interconnection is in the public interest. Petition at 14. The Commission, however, has already fully considered and rejected this position.[5] As with other similar repetitive requests, the Commission should

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[3] *Id.* at ¶¶ 9-11; *Hush-A-Phone Corp. v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

[4] The *Hush-A-Phone* case also involved the justness of a federal tariff. Indeed, CMRS carriers do not even file domestic tariffs. *See Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Second Report and Order*, 9 F.C.C.R. 1411, 1480 ¶ 179 (1994).

[5] *Order* at ¶ 9.

summarily deny ASCENT's Petition for failure to offer any new arguments or evidence warranting reconsideration of this issue.[6]

Third, the Commission considered whether absent a statutory obligation, the public interest necessitates a mandatory interconnection requirement based on the record and properly concluded that it did not. *Order* at ¶¶ 14-22. The Commission noted that imposition of such a specific requirement on CMRS providers that lack market power would be unprecedented. *Id.* at ¶ 20. The Commission also pointed out that:

> [t]here are now three or more mobile telephone operators providing service in Basic Trading Areas serving over 241 million people, or 95.8 percent of the U.S. population. This has resulted in declines of over 40% in three years in the average price per minute of mobile telephone service and high usage.[7]

As a result, the Commission properly concluded that meaningful competition negates the need for a separate reseller switch interconnection requirement.[8]

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[6] For example, in the *OTARD Reconsideration Order*, two parties requested reconsideration of a decision, claiming that the Commission's legal conclusions were based on an improper analysis of the cases cited in the decision. *See OTARD Reconsideration Order*, 14 F.C.C.R. at ¶¶ 5-7. The Commission denied the petitions for failure to raise new arguments or facts warranting reconsideration of the Commission's decision. *Id.* at ¶ 7.

[7] *Order* at ¶ 20 (citing *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 and Annual Report and Analysis of Competitive Market Conditions with Respect to CMRS, Fourth Report*, 14 F.C.C.R. 10145 (1999)). In fact, more than two-thirds of the population now has a choice of between five or more such providers.

[8] *Id.* at ¶ 20; *see, e.g.*, Statement of Commissioner Powell, *1998 Biennial Regulatory Review*, 15 F.C.C.R. 9219 (1999) ("I cannot imagine any other industry segment that can better laud their state of economic competition as 'meaningful.'").

The Commission took into account the costs associated with reseller switch interconnection as reflected in the record. For example, a commenter correctly pointed out that the burdens such interconnection requirements impose on licensees and consumers include:

- the development of operational software to implement the proposal;
- the development and implementation of signaling protocols that are capable of routing traffic to a resellers' switch to complete a call;
- preventing fraudulent calls over the reseller switch; and
- negotiation of additional roaming agreements to accommodate the resellers' customers.[9]

BellSouth also demonstrated that reseller switch interconnection will also diminish service quality by increasing call set-up times, depriving resellers' customers of the benefit of existing roaming agreements, and forcing calls to go through an additional transmission link.[10] The Commission thus correctly found that requiring reseller switch interconnection will increase costs and the agency's administrative burden in determining the same. In light of the costs and benefits, the Commission appropriately opted to leave the issue of reseller switch interconnection to the marketplace absent actual evidence of a market failure requiring regulatory intervention.

In addition, reseller switch interconnection would not be a straightforward adaptation of LEC-cellular interconnection principles. At a minimum, CMRS providers would have to unbundle their service into a variety of detailed service elements as noted in the Commission's

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[9] AT&T Corporation Comments filed June 14, 1995, 29-30.

[10] BellSouth Reply Comments filed July 15, 1995, 11.

Order. *Order* at ¶ 22. Accordingly, it is contrary to the public interest to require carriers to offer reseller switch interconnection as a separate element of their service.

In effect, ASCENT is asking the Commission to require resellers to offer unbundled network elements ("UNEs"). Under Section 251(c), however, UNEs are only applicable to ILECs, not CMRS providers. 47 U.S.C. § 251(c). The Commission therefore correctly observed that: "The 1996 Telecommunications Act ordered unbundling for wireline carriers, but promulgated no such requirement for wireless carriers." *Order* at 22.

ASCENT's real agenda here is for the Commission to "clarify" whether reseller switch interconnection requests should be allowed on a case-by-case basis pursuant to Section 201 rather than requesting reconsideration of the *Order*.[11] Given the breadth of the Commission's ruling on both legal and policy grounds, such requests should be barred. Any other ruling will result in the inundation of the Commission with *ad hoc* reseller switch interconnection requests, despite the Commission's establishment of a policy that there is no general reseller switch interconnection requirement.

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[11] In support, ASCENT relies on statements made by the Wireless Telecommunications Bureau ("Bureau") in connection with a recent decision denying two resellers' requests for interconnection with a CMRS provider's network. *Id.* at 7 (citing *Cellnet Communications, Inc. v. New Par, Inc. d/b/a Cellular One and Nationwide Cellular Service, Inc. v. Comcast Cellular Communications, Inc.*, File Nos. WB/ENF-F-95-010, WB/ENF-F-95-011, DA 00-1600 (rel. July 26, 2000)).

CONCLUSION

For the foregoing reasons, the Commission should summarily deny ASCENT's petition for reconsideration.

Respectfully submitted,

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October 11, 2000

CERTIFICATE OF SERVICE

I, Marionetta Holmes, hereby certify that on this 11th day of October 2000, a copy of the foregoing **"Opposition to Petition for Reconsideration"** was sent by United States Mail, postage prepaid, copies of the foregoing on the following:

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